

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
December 3, 2007 Session

PERRY H. YOUNG v. HAMILTON COUNTY, TENNESSEE

Appeal from the Circuit Court for Hamilton County
No. 05C162 L. Marie Williams, Judge

No. E2006-02718-COA-R3-CV - FILED JANUARY 28, 2008

The plaintiff sued Hamilton County seeking damages for false arrest. Following the dismissal, the plaintiff filed a motion pursuant to Tenn. R. Civ. P. 60.02(2) seeking to vacate the order of dismissal. The motion charged that Hamilton County was guilty of fraud in connection with the filing of its motion. The trial court denied the plaintiff's motion. The plaintiff appeals, contending that the trial court erred when it failed to vacate its order dismissing the plaintiff's complaint. We affirm pursuant to the provisions of Court of Appeals Rule 10.¹

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

Perry H. Young, Chattanooga, Tennessee, appellant, Pro Se.

Mary Neill Southerland, Hamilton County Attorney's Office, Chattanooga, Tennessee, for the appellee, Hamilton County, Tennessee.

MEMORANDUM OPINION

¹ Rule 10 of the Rules of the Court of Appeals provides as follows:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

The trial court correctly dismissed the plaintiff's complaint for false arrest. Hamilton County is specifically immune from such suits under the applicable statute. *See* Tenn. Code Ann. § 29-20-205(2) (2000); *see also* **Potter v. City of Chattanooga**, 556 S.W.2d 543, 546 (Tenn. 1977), *overruled on other grounds by* **Limbaugh v. Coffee Med. Ctr.**, 59 S.W.3d 73, 84 (Tenn. 2001).²

A Rule 60.02 motion “addresses the sound discretion of the trial judge.” **Toney v. Mueller Co.**, 810 S.W.2d 145, 147 (Tenn. 1991). The issue on appeal is whether the court abused its discretion. *Id.* The record before us does not demonstrate an abuse of discretion.

The plaintiff filed a motion in this court seeking to strike the appendix to Hamilton County's brief. That motion is well taken. Accordingly, the appendix to the county's brief is hereby stricken and will not be considered by us.

The judgment of the trial court is affirmed. Costs on appeal are taxed to Perry H. Young. This case is remanded to the trial court for collection of costs assessed there, pursuant to applicable law.

CHARLES D. SUSANO, JR., JUDGE

²**Limbaugh** overruled **Potter** to the extent **Potter** holds that a governmental entity was immunized for intentional torts *not specifically listed in* Tenn. Code Ann. § 29-20-205(2). **Limbaugh**, 59 S.W.3d at 84. Since the instant case involves an intentional tort, *i.e.*, false arrest, that is specifically enumerated in the statute, **Limbaugh** has no bearing on this case.